UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

CASE NO. 12-RC-071890

ADT SECURITY SERVICES, INC.,

Employer,

and

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL UNION 349, AFL-CIO,

Petitioner.

EMPLOYER'S REQUEST FOR REVIEW TO THE NATIONAL LABOR RELATIONS BOARD

Prepared by:

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Pursuant to Section 102.67 of the Rules and Regulations of the National Labor Relations Board ("NLRB" or the "Board"), ADT Security Services, Inc. ("ADT" or "Employer"), files this Request for Review of the Order Directing Elections issued on April 20, 2012, by the Acting Regional Director for Region 12. This Request should be granted based upon the following grounds:

- The lack of a hearing(s) and other rulings in connection with the rerun elections proceeding has resulted in prejudicial error.
- A substantial question of law or policy is raised because of a departure from officially reported Board precedent.
- The Acting Regional Director's decision on substantial factual issues is clearly erroneous and such error prejudicially affects the rights of Employer.

I. BACKGROUND AND BASIS FOR REVIEW

On December 21, 2011, the Petitioner, International Brotherhood of Electrical Workers, Local Union 349, AFL-CIO (the "Union" or "Petitioner"), filed a representation petition seeking certification as the collective bargaining representative in the following unit at ADT's facility located in Miramar, Florida (the "Miramar Facility"):

Included:

(Full time Service Technicians High Volume, and Core) (Full time Installation Technicians High Volume, and Core) Miami-Dade, Broward, and Monroe Counties only.¹

Excluded:

Administration, Clerical, Warehouse, Security Guards, Permit Clerks, Permit Runners, Supervisors

(Bd. Ex. 1.)

The Board held a hearing² on January 17-18, 2012, in Miami, Florida. At the hearing, the parties disputed the scope of the petitioned-for unit. The Employer took the position that the only appropriate unit would actually be two separate units, one of commercial division employees³ and one of high volume division employees.⁴ The Employer further asserted that production (plant) clericals⁵ should be added to the commercial unit and that production

¹ The Employer will use the phrase "field technicians" to refer to all employees in the petitioned-for unit collectively.

² References to the hearing transcript will be referred to as "Tr.," followed by the appropriate page number(s). References to exhibits introduced into evidence at the hearing are designated by the exhibit number, preceded by "Bd. Ex." for the Board's exhibits and "ADT Ex." for ADT's exhibits.

³ The commercial line of business is also referred to by supervisors and employees as "core" and "core commercial."

⁴ The high volume line of business is also referred to by supervisors and employees as "residential," "resi," "resi/high volume," and "resi/small business."

⁵ These included employees in the following job classifications: drafter, estimator, specialists field support national accounts ("field support specialists"), processors licensing compliance ("licensing compliance processors"), coordinator install ("install coordinators"), and coordinator service ("service coordinator"). The official job title is

clericals⁶ should be added to the residential unit. The Petitioner took the position that the petitioned-for unit is appropriate.

On February 17, 2012, Acting Regional Director David Cohen issued the Decision and Direction of Election (the "DDE") in this case. The Employer filed a Request for Review of the DDE on March 2, 2012. The Region held the election in this case on March 14, 2012, and impounded the votes pending the Board's decision on the Employer's Request for Review. On April 9, 2012, the Board issued its Decision on Review and Order (the "Board's Decision") granting Employer's Request for Review. The Decision directed that two separate elections should be held and remanded the case to the Region for further "appropriate action consistent with [the] Decision."

In the Board's Decision, it did not expressly address the Employer's request for review of the DDE with respect to Employer's contentions regarding commercial and high volume production clericals and warehouse employees. On April 12, 2012, the Employer filed a motion for reconsideration of the Board's Decision, which the Board denied on April 24, 2012.

On remand, and after a statement of position from ADT that the Region was not following proper procedures, Acting Regional Director Margaret Diaz issued the Order Directing Elections (the "Region's Order") on April 20, 2012. The Region's Order did not provide a date for the rerun elections; however, the Region subsequently set a date of May 9, 2012 (19 days after the date of the Region's Order) pursuant to a letter dated April 26, 2012.

followed by the commonly used title in parentheses. In this Request, the Employer will refer to employees by their commonly used titles.

⁶ These included employees in the following job classifications: coordinator permitting operations ("permit clerks"), processor licensing compliance ("licensing compliance processor"), assistant permitting operations ("runners"), install coordinator, service coordinator, coordinator supply chain ("supply chain coordinator"), material handler, lead material handler, and processor admin ("close-out clerks").

Since the case was remanded to the Region for further action, the Employer has requested in writing that the Region take a number of actions. The Region has declined almost all of Employer's requests. Specifically, the Region declined to take the following actions when requested to do so by the Employer:

- 1. Require that the Union file new petitions or amend the existing petition (Requested by letter dated April 12, 2012);
- Hold a hearing(s) on remand to resolve issues regarding the composition of the separate units as well as changed circumstances since the March election (Requested by letter dated April 12, 2012);
- 3. Schedule the rerun elections 25-30 days from the date of the Region's Order as required by the Board's regulations (Requested by letter dated April 26, 2012); and
- Conduct the rerun elections in separate rooms (Requested by e-mail on April 23, 2012).

It is the Employer's position that the Region should have taken the above actions instead of proceeding directly to elections on May 9, 2012. Accordingly, the Employer respectfully requests review of the Region's Order and subsequent actions setting a May 9, 2012, election date because:

• The Region's decisions not to hold a hearing(s), not to require new or amended petitions, and not to schedule the rerun elections 25-30 days from the date of the Region's Order and in separate rooms are all errors in this proceeding that either have or could prejudice the Employer.

- The Acting Regional Director departed from officially reported Board precedent by excluding ADT's warehouse employees from the unit.
- The Acting Regional Director clearly erred in deciding substantial factual issues related to the composition of the unit and such errors prejudicially affect the rights of Employer.

II. ISSUES

- A. Whether rerun elections should occur despite the fact that the Region has not held a representation hearing(s), required new petitions or an amended petition, or scheduled the elections according to the Board's guidance.
- B. Whether the petitioned-for unit is appropriate, where the unit excludes employees who have daily contact with petitioned-for employees; share the same terms and conditions of employment with petitioned-for employees; and whose duties are functionally integrated with those of the petitioned-for employees.

III. STATEMENT OF FACTS

A. General Background

ADT, which is owned by Tyco International ("Tyco"), installs and services security cameras, burglar alarms, card access systems, closed circuit television systems, and fire alarm systems. ADT's Miramar Facility is divided into two separate divisions. The commercial division provides services to warehouses, national franchises, and other facilities larger than 5,000 square feet. (Tr. 17.) The high volume division provides services to residential homes, condominium associations, and small businesses with facilities smaller than 5,000 square feet. (Tr. 17.) Within each of the divisions, the workload is split into two teams – the install team and

the service team.⁷ After the corporate split of Tyco, which will occur by September 2012, each division will be in its own standalone company, and one of the two divisions will move from the Miramar Facility. (ADT Ex. 2, Tr. 123.)

1. Commercial Workflow

Commercial install jobs come from the ADT sales representatives. (Tr. 43.) The estimator may get involved at this stage in the process to determine how the install job can be completed most efficiently. (Tr. 43-44.) The drafter is also usually involved here creating diagrams and schematics based off the scope of work from the sale. (Tr. 35.) Once the contract is signed, all the documents come to a commercial licensing compliance processor, who in turn processes the permit application. (Tr. 44.) Almost all commercial install jobs require a permit from the municipality in which the job will occur. When the municipality returns the permit to ADT, the licensing compliance processer gives the permit to an install coordinator. (Tr. 44.) The install coordinator takes the permit, along with the contract, materials list, and other documents, and creates an install packet and distributes the same to the commercial installers. (Tr. 44.) This can occur by the technician either receiving the packet directly from the install coordinator or from a "slot" in the same cubicle as the install coordinator and next to the coordinator's desk. (Tr. 326-27.)

The commercial installer brings the install packet to the warehouse counter, which is staffed by a warehouse employee. (Tr. 44.) The warehouse employee pulls the necessary equipment from the warehouse, and together, the warehouse employee and commercial installer verify that all the necessary materials are there. (Tr. 44, 154.)

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⁷ The install team handles the installation of new systems, whereas the service team handles the maintenance and repair of existing systems.

Now, the commercial installer heads out into the field to complete the job. (Tr. 44.) When the install job is complete, the commercial installer typically calls a permit clerk to notify them the job is ready to be inspected by the municipality. (Tr. 44-45.) The commercial installer returns the install packet with a signed customer acceptance form to the install coordinator. (Tr. 45.) The install coordinator then gives the commercial installer his next install job assignment. (Tr. 45.)

On the other hand, commercial service jobs come from existing ADT customers calling in service requests. (Tr. 45.) The jobs are inputted into the Mastermind system, and the commercial service coordinator assigns it to a service technician. (Tr. 227.) Unlike the commercial installer, who picks up his install packet from an install coordinator, the service technician is notified via handheld device that he has a new service job. (Tr. 150.) If there is a technical issue with the handheld device or some other scheduling error, which happens regularly, the service technician contacts the service coordinator to get the next service job. (Tr. 239-45.)

A commercial service technician keeps equipment on his truck and replenishes that equipment as it is used. (Tr. 155.) As the service technician uses equipment, he scans it using a handheld device. (Tr. 155.) This updates ADT's inventory in the Oracle system. When the service technician runs out of a particular part, he requests a replacement at the warehouse counter. (Tr. 155.)

2. High Volume Workflow

When the customer's order is finalized, it is sent to a high volume install coordinator, who creates an install packet for the high volume installers. (Tr. 349-50.) Before the high volume installer can be dispatched, ADT must get a permit from the municipality for the work.

A permit clerk or the high volume licensing compliance processor collects the paperwork, generates a permit application, and gives the same to a runner. (Tr. 289-90, 292-95.) Because of the large number of jobs completed by the high volume division, the runners take the high volume permit applications directly from the Miramar Facility to the municipalities. When a municipality notifies ADT that a permit is ready, the runner picks it up and returns it to the Miramar Facility (or directly to the jobsite if the technician needs the permit to start work). (Tr. 57.) When the permit is returned to the Miramar Facility, the install coordinator adds the permit to the install packet. He or she places the install packet in the appropriate residential installer's box. (Tr. 349.) There are boxes at the install coordinators' desk for each of the high volume installers they support. (Tr. 349.)

The high volume installer, in turn, brings the install packet to the warehouse counter, and a warehouse employee retrieves the necessary equipment. (Tr. 158-59.) Now the high volume installer leaves for the jobsite. When the install job is complete, the permit clerk will schedule a time for the municipality to inspect the work. (Tr. 304-305.) Meanwhile, the high volume installer returns the install packet to the Miramar Facility. (Tr. 275.) A close-out clerk verifies all the appropriate documents are present, processes the paperwork, and scans everything into an electronic filing system called Order 2 Catch or O2C. (Tr. 275-76.)

High volume service jobs come from existing ADT customers calling in requests for work to be done on systems at their residences or small business. The high volume service coordinator assigns the new service job to a service technician, and the service technician is notified via handheld device that he has a new service job. (Tr. 54.) The service technician keeps an inventory of equipment with him in the field. (Tr. 54.) As the service technician uses equipment, he scans it using a handheld device. (Tr. 54.) This updates ADT's inventory in the

Oracle system. The service technicians obtain replacement parts from the warehouse employees or contact the service coordinator to find out if another service technician is close by that has the needed part. (Tr. 54.) Once the job is completed, the service coordinator does the billing for the job by looking in the Oracle system to determine what equipment was installed on-site. (Tr. 54.)

B. The Petitioned-for Employees Share the Same Terms and Conditions of Employment with the Disputed Employees

1. Employee Pay and Benefits

All of the disputed employees and most of the employees in the petitioned-for unit are hourly employees eligible for overtime. The hourly rates for all these employees are in the same general range. (Tr. 137-140.) Only the installer technicians commission-only residential and installer technicians commission-only small business are paid on commission. (Tr. 139.) All other field technicians are hourly employees eligible for overtime.

Employees in the petitioned-for unit receive the same company benefits as the disputed employees, including the same medical insurance plans, the same vacation plans, the same holiday schedules, the same dental insurance plans, the same flexible spending account options, the same life and accident insurance policies, the same supplemental life insurance plans, and the same long-term disability plans. (Tr. 132-36.)

2. Employment Policies

All of the hourly employees record their time either by clocking in or by keeping a timesheet. The employees who work inside the Miramar Facility punch a time clock, and the field technicians keep timesheets. (Tr. 464.) All of these time entries are put into the Oracle system, which has a module for processing payroll. (Tr. 465.)

3. Job Qualifications and Training

There are no particular education requirements or certifications needed to qualify for any of the job classifications involved in this petition. (Tr. 470.) With regard to on-the-job training, ADT maintains a learning module system, called LMS, where employees can go to complete online training courses. (Tr. 467-68.) There are approximately four to six training courses on LMS that apply to all employees at the Miramar Facility. (Tr. 468.) ADT may require an employee to complete training courses that are relevant to his or her job duties. (Tr. 469.) For instance, field technicians and warehouse employees complete a safety course, and employees who drive vehicles usually complete the Smith driving training course. (Tr. 469-476.)

4. Transfers

It is not uncommon for commercial employees to transfer into another commercial position or for a high volume employee to transfer into another high volume position. Also, employees transfer into and out of job classifications within the petitioned-for unit with some regularity. For instance, five of the six runners formerly were field technicians. (Tr. 100.)

IV. ARGUMENT

A. The Region Failed to Follow Established Board Procedures in Connection with the Rerun Elections and Such Failures Have or Could Result in Prejudicial Error

1. The Region clearly erred in not holding hearing(s) on remand

The Region erred in ruling that hearing(s) were not necessary prior to the rerun elections.

The NLRB Casehandling Manual provides that:

On remand by the Board, an appropriate notice of hearing on remand should be issued. The hearing on remand should be conducted within the bounds set by the order of remand; otherwise, it should be conducted in the same fashion as original representation hearings.

CHM 11280.2. Since the Decision did not set any "bounds," the hearing(s) should be held in the same fashion as the original representation hearing in this case.

By not holding a hearing(s), the Region denied the Employer the opportunity to present evidence on the changed circumstances since the March election. For example, in anticipation of the pending corporate split, the warehouse employees were recently assigned to either the high volume division or the commercial division. Previously, these employees supported both divisions as a single team. The lack of a hearing also deprived the Employer of the opportunity to present evidence on whether production clericals should be included in the units now that the Board has ruled the two divisions at the Miramar Facility have separate communities of interest. Finally, and most significantly, the Region erred in providing no basis whatsoever for its ruling.

2. The Region clearly erred in not requiring new petitions or an amendment to the existing petition to reflect the current scope of the two separate units

In its Decision, the Board determined that the petitioned-for unit was not appropriate. The Decision indicated that two distinct groups with two separate communities of interest exist. Thus, new petitions must be filed – or at the very least, the current petition must be amended to "spin-off" one of the current units and a second petition filed to cover that unit. The Board's finding effectuates a substantial change in the scope of the unit originally petitioned-for and initially found appropriate by the Region. Therefore, the petition, as originally filed, does not represent the scope of the units contemplated by the Board's Decision. As seen in the NLRB Hearing Officer's Guide ("HOG"), current Board principles require caution when not allowing a hearing(s) subsequent to a substantial amendment to the petition. HOG II.G.3. This is to avoid prejudicing the other parties by depriving them of the opportunity to present witnesses and evidence. HOG II.G.3(a)(2). The logic of this section of the HOG applies to the situation in this case, where ADT requested the opportunity to present evidence regarding the composition of the

appropriate units following a substantial change to the petitioned-for unit. Without analysis or reason and thus in clear violation of administrative law and due process principles, the Region denied ADT's request.⁸

3. The Region clearly erred in not scheduling the rerun elections 25-30 days from the date of the Region's Order and in not holding the elections in separate rooms

The Region erred in scheduling the rerun elections in a manner that is inconsistent with the Board's own guidance and regulations. Pursuant to the NLRB Casehandling Manual ("CHM"), "The rerun election[s] should be held when appropriate after the original election is set aside, within the terms of the enabling determination or direction." CHM 11452.1. In this case, the Decision did not set forth any "terms." Therefore, the normal scheduling procedures following a regional director's direction of election apply. Again looking to the CHM, the proper procedure is that "[w]hen the Regional Director directs an election, the election normally should not be scheduled prior to the 25th day thereafter, unless the right to file a request for review has been waived, no later than the 30th day thereafter." CHM 11302.1. Other sections in the CHM provide further support that a 25-to-30 day window after the Region's Order is appropriate in this case. *See* CHM 11454-11456.3 (directing Regions to refer back to the procedures "of an original election").

What is more, a regulatory right to elections within the 25th and 30th days following the Region's Order exists. See 29 C.F.R. § 101.21(d). This right exists to permit the parties to file a request for review and for the "Board to rule on any request for review which may be filed." *Id.* The situation here is exactly the situation cautioned of in the regulations. Because the Region has rushed to schedule elections earlier than 25 days from the Region's Order, the Board will

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⁸ We note that at the earliest stages of this case, the Region allowed Petitioner to withdraw its original petition and re-file the current one, merely to accommodate the schedule of Petitioner's counsel. Clearly, requiring Petitioner to re-file appropriate Petitions to reflect the substantially changed circumstances is equally appropriate to the gravity of the issues before the NLRB.

have a little (and possibly no) opportunity to review Employer's Request for Review. This lack of opportunity of review may result in another impoundment of the votes. Again, the Region gave no reasoned analysis in rejecting ADT's position that May 9, 2012, was an improper election date. ADT notes, however, that the Region in its April 26, 2012, letter in response to ADT's position, attempts to tie the May 9, 2012, election date back to the date of the Board's Decision, in addition to the date of the Region's Order. Thus, it appears the Region recognized its own error in not setting the election at least 25 days from the Region's Order. Under the rules and guidance applicable to rerun elections, this error must be allowed to stand.

Furthermore, the Region erred in deciding to hold the high volume election and the commercial election in the same room. ADT made arrangements for the elections to be conducted in separate rooms, but the Region insisted that the elections should occur in one room. This arrangement invites unnecessary confusion and increases the chances that ballots will be mixed up or miscast on election day. While ADT is fully cognizant of and sympathetic to the Region's desire to conserve resources, the marginal "savings," if any, of not having two Region employees run separate elections – in two rooms at one location during normal work hours – is far outweighed by the potential for objectionable election error.

- B. Because the Duties of the Disputed Employees are Functionally Integrated With the Install and Service Function and the Disputed Employees Have Routine Daily Contact with the Field Technicians, the Disputed Employees are Production (Plant) Clericals
- 1. Generally, the Acting Regional Director failed to apply the production clerical analysis

 Both in the DDE and the Region's Order, the Acting Regional Director neglected to
 follow the Board's case law holding that production clericals should be included in a unit of
 employees they support. As the Board law states, Employees who perform clerical duties in
 association with the production process are considered production clericals and should be

included in the same unit as the employees they support. *Goodman Mfg. Co.*, 58 N.L.R.B. 531, 533 (1944); *Brown & Root, Inc.*, 314 N.L.R.B. 19, 23 (1994). In the instant case, the disputed employees are production clericals since they are integral to ADT's install and service operations.

The disputed employees and petitioned-for employees also share common benefits and salary ranges with the field technicians and these two facts indicate that these employees have an overwhelming community of interest with one another. However, the Acting Regional Director gave little weight to the fact that ADT offers the exact same medical insurance plans, vacation plans, holiday schedules, dental insurance plans, flexible spending account options, life and accident insurance policies, supplemental life insurance plans, and long-term disability plans to the petitioned-for employees and disputed employees alike. (Tr. 133-35.) Likewise, the Acting Regional Director discounted the fact that the wage ranges for the disputed employees fall within the same ranges as those of the petitioned-for employees. The field technicians earn anywhere from \$15.49 to \$26.33, and the employees in the disputed classifications earn anywhere from \$13.02 to \$25.03.

Thus, as detailed in Employer's Request for Review filed with the Board on March 2, 2012, and explained below, the disputed commercial employees share an overwhelming community of interest with the commercial field technicians, and the disputed high volume employees share an overwhelming community of interest with the high volume field technicians.

2. The Warehouse Employees

Prior to the March election, these warehouse employees all collectively supported both divisions. Now, in anticipation of the corporate split, two warehouse employees exclusively support the high volume division and two exclusively support the commercial division.

Accordingly, the commercial material handler and lead material handler should be included in the commercial unit and the supply chain coordinator and high volume material handler should be included in the high volume unit.

These warehouse employees should be included in a unit consisting of the employees they support because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. In its Post Hearing Brief, the Employer cited three Board cases unequivocally holding that warehouse employees should be included in the bargaining unit consisting of the employees they support. *See Brown & Root, Inc.*, 314 N.L.R.B. 4 (1994) (material take-offs and toolroom/warehouse clerks should be included in a production and maintenance unit); *Mid-State Distributing Co., Inc.*, 276 N.L.R.B. 1511 (1985) (inventory clerk should be included in a unit of warehouse employees); *Avon Products, Inc.*, 250 N.L.R.B. 1479 (1980) (inventory clerks must be included in a unit of production and maintenance employees). The Union cited no case holding that the warehouse employees should be excluded. Nevertheless, the Acting Regional Director excluded the warehouse employees from the unit. The Acting Regional Director continued to exclude the warehouse employees in the Region's Order. This is a departure from officially reported Board precedent and is clearly error.

3. The Install and Service Coordinators

The high volume install and service coordinators should be included in the high volume unit and the commercial install and service coordinators should be included in the commercial unit because the coordinators have daily contact with the field technicians and their duties are functionally integrated with the operations at the Miramar Facility. The Board has found that a coordinator is a production clerical and should be included in a unit of skilled maintenance

workers. *Desert Palace Inc.*, 337 N.L.R.B. 1096, 1098-99 (2002). ("Such dispatching duties have been found to be plant clerical in nature"); ("On this record, then, while the scope of Maier's [technical] duties may not be certain, it is clear, we think, that Maier cannot be excluded from the unit as an office clerical. To the extent that Maier performs clerical duties, we agree with the Employer that they are plant clerical in nature"). Thus, it is error to exclude employees who perform dispatching duties, and such error exists with respect to the coordinators here.

4. The Drafters, Estimator, and Field Support Specialists

The drafters, estimator, and field support specialists should be included in the commercial unit because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. As explained in Employer's Post-Hearing Brief and its prior Request for Review, the drafters create *technical* diagrams that are used in the field by technicians. The estimator uses *technical* knowledge to transition the customer's desires into *technical* plans that the commercial installers can use to install the system. Similarly, the field support specialists provide *technical* background to the commercial installers regarding why an installation should be done in a specific way.

The Board has held that employees who use technical knowledge to prepare design documents should be included in a unit of technicians. *See PECO Energy Co.*, 332 N.L.R.B. 1074 (1997). The Board concluded that these employees should be included because their work was integrated with the facility's operations. *Id.* at 1087. This is consistent with other Board cases regarding drafters. *See McLean Hospital*, 234 N.L.R.B. 54 (1978) (draftsmen working in the administrative office included in operations unit); *Tarrant Mfg. Co.*, 196 N.L.R.B. 794 (1972) (draftsmen included in production and maintenance unit). The Acting Regional Director clearly erred in failing to apply this Board precedent.

5. The Runners

The runners should be included in the high volume unit because their duties are functionally integrated with the operations at the Miramar Facility. In concluding in the DDE and the Region's Order that the runners do not share a community of interest with the petitioned-for employees, the Acting Regional Director completely ignored the Board precedent cited by the Employer holding that drivers should be included in a unit of production and warehouse employees at a production facility. *Int'l Bedding Co.*, 356 N.L.R.B. 1 (2011).

6. The Permit Clerks and Licensing Compliance Processors

The permit clerks and high volume licensing compliance processor should be included in the high volume unit and the commercial licensing compliance processors should be included in the commercial unit because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. Thus, the Acting Regional Director erred in excluding them. The permit clerks and licensing compliance processors receive and process paperwork that is essential to the functioning of the Miramar Facility's operations. They also regularly take calls from field technicians regarding permit issues. There was testimony from one permit clerk that she handled 5-10 calls a day from field technicians. (Tr. 60.) Approximately 25% of her day was spent addressing the concerns raised in those phone calls. (Tr. 301.)

7. The Close-Out Clerks

The close-out clerks should be included in the high volume unit because those employees have daily contact with the petitioned-for employees and their duties are functionally integrated with the operations at the Miramar Facility. In excluding the close-out clerks in both the DDE and the Region's Order, the Acting Regional Director never addressed the Board precedent cited

by the Employer holding that employees who collect and process paperwork on the back end of the workflow should be included in the unit as production clericals. *See Federal Express Ground Package Sys., Inc.*, 2001 N.L.R.B. Lexis 1088 (2001) (check-in clerks and data entry clerks should be included in a unit of package handlers).

At its core, the Region's position on clericals and warehouse employees is illogical, particularly on the community of interest factors addressing functional work integration, frequency of contact, and similar employee terms and conditions of employment. *See Kalamazoo Paper Box Corp.*, 136 N.L.R.B. 134 (1962). The technicians spend part of every single day dealing with their coordinators, and they spend even more time with the warehouse employees. The field technicians themselves primarily work alone. If a portion of the technicians went on strike, it would not impact the other technicians at all; yet, a strike by technicians or warehouse employees or coordinators would impact the other groups significantly. At the end of the day, in excluding production clericals, and especially the warehouse employees, the Region misapplies the community of interest standards. This misapplication resulted in a results-driven decision that conflicts with the principles underlying the NLRA.

V. CONCLUSION

For the above reasons, the Acting Regional Director clearly erred in multiple procedural rulings leading up to the rerun elections and in excluding the production clericals who share an overwhelming community of interest with the field technicians.

Therefore, the Region's Order thus must be reversed.

Accordingly, the Board should reverse the Region's Order and direct that employees in the following job classifications should be added to the commercial unit:

- 1. Drafter;
- 2. Estimator;
- 3. Field Support Specialist;
- 4. Commercial Licensing Compliance Processor;
- 5. Commercial Install Coordinator;
- 6. Commercial Service Coordinator;
- 7. Commercial Material Handler; and
- 8. Lead Material Handler.

Employees in the following job classifications should be added to the high volume unit:

- 1. Permit Clerk;
- 2. High Volume Licensing Compliance Processor;
- 3. Runner;
- 4. High Volume Install Coordinator;
- 5. High Volume Service Coordinator;
- 6. Supply Chain Coordinator;
- 7. High Volume Material Handler; and
- 8. Close-out clerk.

Dated this the 4th day of May 2012.

Respectfully submitted,

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Petitioner.)))	

CERTIFICATE OF SERVICE

This is to certify that I have this day served via Electronic Mail this Request for Review on the following:

Alan Eichenbaum, Esq. 10059 N.W. 1st Court Plantation, FL 33324 alanlaw@bellsouth.net

This is to certify that I have this day served via Electronic Filing this Request for Review on the following:

Acting Regional Director Margaret J. Diaz National Labor Relations Board, Region 12 201 E. Kennedy Boulevard, Suite 530 Tampa, FL 33602

This the 4th day of May 2012.

OGLETREE, DEAKINS, NASH,

SMOAK & STEWART, P.C.

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